

November 30. 1759.

Served on 30
days.

Unto the Right Honourable the Lords of Council and Session,

THE

PETITION and COMPLAINT

OF

Daniel Campbell of Shawfield, Esq; William
Graham younger of Garimore, Esq; Advocate,
and Alexander Cunnyngname one of the Clerks to
the Signet,

Humbly sheweth,

THAT your Petitioners conceiving themselves to have
acquired the Qualifications required by Law to be
admitted upon the Roll of Freeholders for the Coun-
ty of Renfrew, did, in Pursuance of the Statute of
the 16th of his present Majesty, and in exact Conformity
thereto, lodge their respective Claims with the Sheriff-clerk
more than two calendar Months before the last Michaelmas
Meeting; and having produced their Title-deeds, to be here-
after more particularly stated, to the aforesaid Meeting of Free-
holders at Michaelmas last, claimed to be admitted into, and
entered upon said Roll.

That Mr Muir of Caldwell, the present Member for said
County, was pleased to state a Variety of Objections to all and
each of your Petitioners Qualifications; and though your Pe-
titioners are advised, that these Objections were in themselves
most frivolous, and neither competent to the Objector to make,
nor to the Meeting of Freeholders to take Cognisance of, the

A

Freeholders

of whither
free holders at their
michaelmas meet-
ing can object to
the claimants auth-
rights that he
was barred from
disposing by a
strict entail?

Feb 1760

to be collected

Freeholders were pleased, by so many several Interlocutors upon each of your Petitioners Qualifications, to refuse to inroll.

That your Petitioners conceiving themselves to be greatly aggrieved by these Judgments of the Freeholders, and consequently to be intitled to sue for Redress of this Wrong by summary Complaint to your Lordships, in terms of the above-mentioned Statute of the 16th of the King, they make this their humble Application for that Purpose.

And that your Lordships may be enabled to judge of the Relevancy of this Complaint, and of the Sufficiency and Competency of those Objections which the Meeting of Freeholders were pleased to sustain, they will state *seriatim* their respective Titles, the Exceptions that were taken to these, and the Answers that were then made, with such further Answers upon any of the particular Articles as may now occur.

Mr Campbell of Shawfeild's Titles. *Boyd Porterfield* of that Ilk was Vassal to the Earl of *Glencairn* in the Lands of *Nuttishill*, *Gibblistons*, and others.

Dec. 20. 1757. The Earl of *Glencairn*, by Deed, of this Date, disposed to Mr *Porterfield*, his Vassal, The Superiority of said Lands, containing Procuratory of Resignation, &c.

Feb. 23. 1758. Upon the Procuratory contained in the aforesaid Disposition, Mr *Porterfield* expedite a Charter of Resignation under the Great Seal.

Sept 21. 1758. But as no Infeftment had hitherto been expedite upon said Charter, Mr *Porterfield*, of this Date, disposed the Superiority of Part of said Lands, viz. the Lands of *Gibbliston*, *Wester Branchill*, *Killotrees*, with Mills and Multures of the same, Lands of *Woodend*, *Barnshawick*, called *Wester Barnshawick*, *Craigchinchloch*, *Easter*, *Wester*, and *Middle Dippanies*, *Auchinquabail*, *Ower* and *Nether Wood*, and Lands of *Nether Mains* of *Duchal*, with Woods, Fishings, &c. Parts, Pendicles, and Pertinents, to your Petitioner Mr *Campbell* of *Shawfield*, in Liferent, and to Lord *Glencairn*, and his Heirs, in Fee, containing an Assignment to Mr *Porterfield*'s Charter under the Great Seal, and

Precept



Precept of Seisin therein, so far as related to the above-mentioned Lands.

And in virtue of said Precept, Mr *Campbell* was infeft in the Sept 22. 1758. Liferent, and Lord *Glencairn* in the Fee, and their Infestment duly recorded.

As the whole Lands of *Duchal*, whereof these were a Part, stood valued in *cumulo* in the Valuation-books of this County, Application was, of this Date, made to the Commissioners of April 30. 1759 Supply, in their general Meeting, in name of Mr *Campbell* of *Shawfield*, and of your other Petitioner Mr *Graham*, as Purchaser of the Superiority of another Parcel of said Lands, for having said *cumulo* Valuation divided, and the Proportion effeiring to the Lands disposed to them respectively ascertained, and separately stated in the Cess-books.

As no Exception lies to the Proceedings of the Commissioners of Supply in making that Division, it is unnecessary to state the same minutely. It shall therefore suffice to observe, that having appointed a Committee of their own Number to take Proof of the real Rent of the whole Lands, and to report the same to the next adjourned general Meeting, on the first Tuesday of August thereafter; and the Committee having accordingly taken and reported the Proof, with a Scheme for dividing said *cumulo* Valuation in Proportion to the real Rent of the respective Lands, whereby that Parcel disposed to Mr *Campbell* of *Shawfield* was ascertained to be L. 465 : 14 : 1 of valued Rent;

The Commissioners of Supply, by their Decree of Division, of this Date, approved of said Report, and appointed the re- Aug. 7. 1759. spective Valuations, as ascertained by said Scheme, to be separately stated in the Cess-books.

It was objected by Mr *Muir* of *Caldwall*, That the above-mentioned Lands upon which Mr *Campbell* of *Shawfield* claimed to be inrolled, are Part of the entailed Estate of *Glencairn*: That by that Tailzie, whereof an Extract was produced, the present Earl, and all the other Heirs of Entail, are laid under an express Prohibition to sell or alienate any Part of the tailzied Estate,

Object. 1. to
Mr Campbell
of Shawfield's
Qualification.

state, with the usual irritant and resolute Clauses in case of Contravention: That said Entail had been duly recorded in the Register of Tailzies, in terms of the Statute 1685, whereby the Earl was disqualified from granting, and the Claimant from acquiring that Right under which he now claims to be inrolled: and, That the Right so acquired being absolutely void and null, by the express Words both of the Tailzie, and of the Statute 1685, could not vest in the Claimant such Right of Freehold upon which he could be intitled to be inrolled.

That the Claimant could take no Benefit from that Clause in the late Statute abolishing Ward Holdings, whereby Superiors possessed of entailed Estates, are allowed to convey their entailed Superiorities to the Vassals of these Lands; for that it was the Enfranchisement of the Vassals, and their thereby becoming the immediate Vassals of the Crown, which the Legislature had thereby in View, as a Matter of public Benefit; and therefore the Statute enacts, " That it shall be lawful to any Person possessed of an entailed Estate, to sell to his Vassal the Superiority of his own Lands, and thereupon to resign such Lands for new Infeftment to be granted to the Vassal." That no Sale or Transmission of any Superiority by an Heir of Entail, can be good and effectual, unless it is executed in terms of this Statute: That this Superiority was not sold and conveyed to *Boyd Porterfield* the Vassal, in order to enfranchise and render him the Vassal of the Crown, but, on the contrary, the evident and sole Purpose of this whole Transaction, was to substitute several Superiors over Mr *Porterfield's* Estate, in place of the Earl of *Glencairn*. But whatever the Purpose was, it has not been carried into Execution in terms of the above-recited Clause of the Statute, which enacts, That it shall be lawful to any Persons possessed of a tailzied Estate, to sell their Superiority to their Vassals, and thereupon to resign such Superiorities for new Infeftment to be granted to the Vassals, which shall be good and valid. For though, in this Case, the Superiority was first conveyed by Lord *Glencairn* to Mr *Porterfield* the Vassal, and a Charter thereupon

thereupon expedie in Mr *Porterfield's* own Name, no Infeftment had been taken by him upon that Charter ; but, on the contrary, he had conveyed that Charter and Precept, partly to the Claimant Mr *Campbell* of *Shawfield*, partly to Mr *Graham* younger of *Gartmore*, another of the Claimants ; fo that Mr *Porterfield* the Vaffal was never enfranchifed, and the Superiority conveyed by Lord *Glencairn* to him, was never consolidated with his Property.

2dly, That it is notorious, and can be proved by the public Records, that Mr *Porterfield* the Vaffal held the Property of thefe Lands by a ftrict Entail, containing prohibitory, irritant and refolutive Claufes : And therefore, fupposing the aforefaid Sale and Conveyance of the Superiority by Lord *Glencairn* to him, fhould be deemed a proper Execution of the late Statute abolifhing Ward Holdings ; and fupposing that Mr *Porterfield* was thereby enfranchifed, and became an immediate Vaffal of the Prince ; it was not in his Power afterwards to fplit that Superiority, whereby to create a Burden and Servitude upon his tailzied Eftate, to the Prejudice of the Heirs of Entail, and contrary to the Prohibitions of the Tailzie ; and that fupposing he had Power to create different Superiors, it had not been executed properly, and in a manner conform to the feudal System and Principles, which require feudal Charters to be granted by thofe Superiors to the Vaffal, which, by the Writings produced by the Claimant, appears not to be the Cafe : And as the whole Tranfaction between Lord *Glencairn* and his Vaffal Mr *Porterfield*, and between him and the Claimant, was voluntary and gratuitous, this Conveyance of the Superiority by Mr *Porterfield* to the Claimant, was void and ineffectual, as inconsistent with the Tailzie under which Mr *Porterfield* holds his Eftate.

Object. 2.

That the whole of this Scheme, from firft to laft, is contrary to the Plan and Spirit of the whole Laws relating to Elections ; and the Title of this Claimant could not be confidered in any other Light than that defcribed in the Statute of the 7th

Object. 3.

of the King, viz. "as nominal and fictitious, created with
 "no other View or Purpose but to enable the Claimant to vote
 "for a Member to serve in Parliament," agreeable to the Deci-
 sion of the Court of Session 19th June 1756, in the Case of
 the Freeholders of *Kincardine* against *Burnet* of *Creigie*.

Object. 4. That as the Charter from the Crown granted to *Boyd Porterfield*, under which this Claimant, and Mr *Graham* younger of *Gartmore*, did both claim, contained one joint *Reddendo* for the whole Lands separately conveyed to them, it was not in the Power of the said *Boyd Porterfield* to split the aforesaid Crown-charter, and Precept of Seisin, and Lands therein contained, and the Duties and Services contained in the *Reddendo*, by voluntary Assignments, without Consent of the Crown.

Object. 5. That the Claimant ought to produce the Extract of the Division of the *cumulo* Valuation by the Commissioners of Supply, and whole Proceedings thereon, to be examined and considered by the Freeholders, *ad hunc effectum*, that they may judge how far, upon the Merits of that Valuation and Division, the Claimant is intitled to be inrolled: And, *separatim*, That the Claimant could not found his Valuation upon that Subdivision, as being long subsequent to the Date of his Claim, which ought to set forth the whole Rights, Titles, and other Documents of the Claim.

Answers to
 Object. 1. to
 Mr Campbell
 of Shawfield's
 Qualification. To these Objections the following Answers were made.
 That it was *jus tertii*, and no wise competent to the Meeting of the Freeholders to move this Objection, founded upon the Tailzie of the Estate of *Glencairn*: That if Lord *Glencairn* had contravened the Prohibitions of that Entail, it was only competent to the Heirs of Tailzie to take Advantage of the supposed Contravention: That a Conveyance granted by an Heir of Tailzie, however strictly bound down, is good against every Mortal but the Heirs substituted in that Tailzie, who alone were intitled to challenge the same: That it is optional for them to challenge it or not, as they think proper: That if they do not challenge the same, such Challenge is incompetent to any

ny third Party; far less to a Meeting of Freeholders, who have no Title to found upon the supposed Right of the other Heirs of Tailzie: That the Superior could not, under this Pretence, refuse to receive the Disponee, and to vest him in the feudal Right: And as the Claimant, in this Case, stands so vested, and has been admitted and received to be the Prince's Vassal in these Lands, he is intitled to exerce every Act consequential of his Property that is competent to any other Proprietor; and therefore that this Objection was incompetent and *jus tertii* to the Meeting of the Freeholders, who could only decide and determine upon the Titles produced, without regard to Settlements in favour of third Parties, or Rights competent to them.

2dly, That there was no Relevancy in the Objection, supposing it to be proponed by a Party having a proper Title and Interest to move the same, in regard that, by the late Statute abolishing Ward Holdings, it is made lawful for Superiors to dispoise their entailed Superiorities to their Vassals in these Lands: That Mr *Porterfield* had accordingly purchased the Superiority of these his Property-lands from the Earl of *Glencairn*, and had expedite a Charter thereon in his own Name, whereby that Superiority was effectually separated from the Tailzie of the Estate of *Glencairn*: That though the Enfranchisement of the Vassal, in the View of his being thereby put in Condition to become the immediate Vassal of the Crown, may have been the principal or inductive Motive of the Power and Faculty thereby granted to Heirs of Entail, to sell their entailed Superiorities to the Vassals of these Lands, the Law had not disabled the Vassal, after having thus purchased his Superiority, from disposing thereof thereafter at Pleasure, or laid him under any Obligation to hold these Lands for ever of the Crown; and therefore that it was lawful for Mr *Porterfield* to dispose of this Superiority, so purchased from the Earl of *Glencairn*, to any Person or Persons he thought proper, as well before, as after Infeftment expedite in his own Person: That the Charter and Precept being conceived in favour of Assignies, these might lawfully be assigned in favour

vour of the Purchaser, and the feudal Right completed by Infeftment in his Person ; and that this was justified by univerfal Practice.

Answers to
Object. 2.

That it was equally incompetent and *jus tertii* to the Meeting of Freeholders, to found any Objection upon the supposed Tailzie of Mr *Porterfield* the Vassal ; and that the Objection itself was manifestly irrelevant : For that had the Property of these Lands been ever so strictly entailed, the Superiority afterwards acquired could not be brought under the Fetters of that Entail, without some positive Act or Deed to that Purpose ; the Heirs of Entail had no *jus quæsitum* thereby to the Superiority ; and therefore that *Boyd Porterfield* was at full Liberty to dispose of that Superiority, in the same manner as if there never had been any Entail of the Property ; as had been decided by the Court of Session in many similar Cases.

Answers to
Object. 3.

That the Claimant's Right is neither nominal, nor fictitious ; but is a true real Estate in the Claimant, which he holds for his own behoof, which he is at Liberty to dispose of at Pleasure, and may be attached for his Debts : That it has all the Qualifications required by Law to intitle the Claimant to the Rights and Privileges of a Freeholder for this County, being upwards of L. 400 of valued Rent : That he is thereby intitled to the Rents, Profits, and Emoluments of this Estate during his Life. And though the Claimant's Views in purchasing this Estate should be supposed to have been none other but to intitle him to the Rights and Privileges of a Freeholder of this County, that would furnish no relevant Objection, where the Reality of the Estate is not disputed, unless it could also be proven to be nominal and fictitious. It is one of the most valuable Privileges of a *British* Subject, to be capable to be elected or to elect a Commissioner to Parliament ; so that no Man can justly be found fault with for being ambitious to acquire such an Estate as may qualify him in both these respects : And as the Law has established those Qualifications which intitle to a Freehold, whoever is possessed of these, not nominally and fictitiously, but really

really and truly for his own proper behoof, can with no Justice be refused the Enjoyment of those Privileges which the Law has annexed to such Qualification.

That this also was *jus tertii* to the Objector, and incompetent for the Meeting of Freeholders to take Cognisance thereof. Nor was there any Relevancy in the Objection itself. There is no Difference in this respect between a Charter granted by the Crown, and any other Person. When the Crown grants a Precept to Assignees, it implies a Consent on the Part of the Crown to the Granter's disposing of the Lands, in whole or in part, and consequently of the Charter and Precept, as relative thereto, in favour of any third Parties. Nor is the Superior thereby prejudged; because the whole Lands, and every Part thereof, are still liable in Payment of the whole *Reddendo*, however split among the different Purchasers. And it is far from being a clear Point, that even the Crown or other Superior may not be compelled, by a proper Process, to proportion the *Reddendo* among the different Purchasers, as a necessary Consequence of that inherent Power which the Proprietor has to sell any Parcel or Portion of these Lands, for which by his own Charter he pays one *Reddendo*. Answers to
Object. 4.

The Claim did properly and truly set forth the Names of the Lands, with the Claimant's Titles thereto, and that they were above *L. 400* of Valuation. How much the Valuation exceeded that Sum, was immaterial. The Claimant had timeously applied to the Commissioners of Supply, at their general Meeting in the *April* preceding, to have the *cumulo* Valuation divided; and a Committee was named to take Proof of the real Rent of the different Lands, and to report the same to the next adjourned general Meeting upon the first *Tuesday* of *August* thereafter. All this was accordingly done: And as, by the Scheme relative to that Division of the *cumulo* Valuation, the Claimant's Lands were ascertained to be considerably more than *L. 400* of valued Rent, that Scheme was approved of, and the Valuation so divided ordained to be separately stated in the Cess- Answers to
Object. 5.

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books;

books; and these Lands are liable for, and pay Cess according to that Division. This is all that the Law requires to intitle to an Inrolment. And though the Decreet of Division was not quite finished when the Claim was lodged, as it was in Fact finished two Months before the *Michaelmas* Meeting, it was sufficient for the Purpose of this Inrolment, if the *cumulo* Valuation was finished before the *Michaelmas* Meeting; it being properly certified to that Meeting, that these Lands stood then valued in the Cess-books, and were liable to his Majesty's Supplies at the Rate of above *L. 400* of valued Rent.

For as to what is said, That the Claimant ought to produce to the Meeting of Freeholders the whole Proceedings of the Commissioners of Supply, *ad effectum* that the Freeholders may judge whether the Commissioners had made the Division properly or improperly; the Claimant is advised, that this would have been assuming a Jurisdiction which did not belong to the Freeholders. The Law has committed the Division of Valuations to the Commissioners of Supply, exclusive of all others, in so much that it has been doubted whether the Court of Session had Power to rectify any supposed Wrong by them done. And though, in some late Instances, it may have been found, that the Court of Session has a Power to redress any Wrong done by the Commissioners of Supply, when brought under their Review in a regular Manner, by a Process of Reduction at the Instance of any Party having a proper Interest to complain thereof; it is a new Doctrine, that a Meeting of Freeholders should be intitled to scrutinize the Proceedings of the Commissioners of Supply, to any Effect whatever. They might with equal Justice call for Production of the whole Progress of the Claimant's Title-deeds to his Estate, under pretence of discovering Flaws and Imperfections therein.

Upon advising these Objections and Answers, the Vote being put, Inroll, or Not? it carried, Not to inroll.

Mr Graham The Titles produced for Mr Graham younger of Gartmore were identically the same, *mutatis mutandis*, with those of Mr Campbell of Shawfield, viz.

Mr Graham
younger of
Gartmore's
Qualification.

1st, The Earl of Glencairn's Disposition to *Boyd Porterfield*, Dec 20. 1757.
his Vassal, of the Superiority of the aforesaid Lands of *Nuttishill*, *Gibblistons*, and others.

2^{dly}, Charter under the Great Seal, in favour of Mr *Porterfield*, Feb. 23. 1758.
proceeding upon the Procuratory contained in the aforesaid Disposition; but upon which no Infestment was taken.

3^{dly}, Disposition by the said *Boyd Porterfield* to Mr *Graham* Sept 21. 1758.
younger of *Gartmore* in Liferent, and to the Earl of *Glencairn* and his Heirs in Fee, of the Superiority of the Lands of *Easter* and *Wester Siddes*, *Chapel* and *Chapel* Lands, *Bridge-end* and *Cairncurrinbill*, *Tower*, *Fortalice*, and *Manor-place* of *Duchal*; Lands of *Milton*, and *Mill* thereof, *Nuttishill*, *Easter Branchil*, *Blacksholm*, *Barnshawick*, called *Easter Barnshawick*, and *Jordanshaw*, with the *Manor-place*, *Parts*, *Pendicles*, &c. containing an Assignment to Mr *Porterfield*'s Charter under the Great Seal, and Precept of Seisin therein, so far as related to these particular Lands.

4^{thly}, Mr *Graham* and Lord *Glencairn*'s Infestment in the Sept 22. 1758.
Premises, in virtue of the aforesaid Precept, for their respective Rights of Liferent and Fee.

5^{thly}, The Division of the *cumulo* Valuation of these and other Lands above mentioned, by the Decree of the Commissioners of Supply, of this Date; whereby the Proportion of that Aug. 7. 1759.
cumulo Valuation corresponding to Mr *Graham*'s Lands was ascertained to be L. 749 : 7 : 10.

Those Titles being produced to the Meeting of Freeholders, the very same Objections and Answers that had formerly been made in the Case of Mr *Campbell* of *Shawfield* were again repeated upon Occasion of Mr *Graham*'s Claim; whereupon the Freeholders were pleased to give the like Judgment, refusing to inroll.

The Titles produced for Mr *Cunnyngame* were, in the Mr *Cunnyng-*
first place, a Charter under the Great Seal, of this Date, of hame's Qua-
the Lands of *Craigbait* and *Kersfemeadow*, being a Five Pound lification.
Land Aug. 6. 1756.

Land of old Extent, retoured prior to the 1681 ; and of certain other Lands therein contained.

Oct. 24. 1757. 2dly, Mr *Cunmynghame*, before expeding Infeftment upon the Precept in said Charter, executed a Disposition, of this Date, of the aforefaid Lands of *Craigbait* and *Kerfemeadow*, and of the Precept contained in the aforefaid Charter, fo far as related to thefe Lands, to himfelf in Liferent, and to the Earl of *Glencairn* and his Heirs, in Fee.

Nov. 8. 1757. 3dly, Mr *Cunmynghame* and the Earl, in virtue of the Pre-miffes, were, of this Date, infeft in the above-mentioned Lands for their refpective Rights of Liferent and Fee.

4thly, And for verifying that thefe Lands were a Five Pound Land of old Extent, there was produced the Retour of *Alexander* Earl of *Glencairn*, as Heir in fpecial to his Father *William* Earl of *Glencairn*, Lord High Chancellor of *Scotland*, dated 8th February 1660.

Object. 1. to Mr *Cunmyng-hame's* Qualification. That thefe Lands upon which Mr *Cunmynghame* claimed, are Part of the tailzied Eftate of *Glencairn* ; whereby the Heirs of Tailzie were prohibited to fell or alienate any Part of faid Eftate, with Claufes irritant and refolutive ; and as that Tailzie had been recorded in the Register of Entails, the Earl was difqualified from granting, and the Claimant from acquiring any fuch Right ; which, by the exprefs Terms of the Tailzie, as well as of the Statute 1685, was abfolutely void and null ; and therefore could not veft in the Claimant a Right of Freehold upon which he could be intitled to be inrolled.

Object. 2. That the Claimant's Title fell under that Description in the Statute of the 7th of the King, of being nominal and fictitious, created with no other View or Purpose but to enable Claimants to vote for a Member to ferve in Parliament ; which therefore ought not to be fufained ; as had been decided by the Court of Seflion in a fimilar Cafe, 19th June 1756, Freeholders of *Kincardineshire contra Burnet of Creigie*.

Object. 3. That the Charter from the Crown, under which Mr *Cunmyng-hame* claims, contains a joint *Reddendo* both for the Lands of *Craigbait*

Craigbait and *Kersfemeadow*, upon which Mr *Cunnyngame*'s Claim is founded, and for certain other Lands conveyed by him to Mr *Dalrymple* of *Orangefield*; and that it was not competent to, or in the Claimant's Power to split the aforesaid Charter, Precept of Seisin, and Lands therein contained, Duties and Services prestable by the *Reddendo* thereof, by voluntary Assignment, without Consent of the Crown.

As these Objections were, *in totidem verbis*, a Repetition of so many of the Objections that had been stated against the Qualifications of the former Claimants, the same Answers were repeated for Mr *Cunnyngame*.

And as a further Answer to the *first* Objection, it was denied on the Part of Mr *Cunnyngame*, that these Lands of *Craigbait* and *Kersfemeadow* made any Part of the tailzied Estate of *Glencairn*: For that though these Lands did appear to be contained in the original Tailzie of that Estate, executed by *William* late Earl of *Glencairn* in 1708, it was equally true, that the prohibitive, irritant, and resolute Clauses therein contained, were not binding upon the Earl himself, who thereby reserved a Power to alter, sell, or dispoise, &c.: That accordingly the said *William* Earl of *Glencairn* had disposed these Lands of *Craigbait* and *Kersfemeadow* to his second Son Mr *John*: That the present Earl of *Glencairn* had disposed these Lands to Mr *Cunnyngame*; upon which he had obtained Decreet of Adjudication in implement against the present Earl, as lawfully charged to enter Heir in special to the said Mr *John Cunnyngame* his Brother; and had thereupon obtained the aforesaid Charter from the Crown, upon which he was infeft.

Answer to
Object. 1.

And as an additional Answer to the *third* Objection, Mr *Cunnyngame* has now further to observe, That it is in Part not founded in Fact, in so far as these Lands have a separate *Reddendo* for themselves.

Answer to
Object. 3.

In support of the Objection first above mentioned, Mr *Muir* of *Caldwall* was pleased to reply, That there is no Evidence produced

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duced to the Freeholders that the late Earl of *Glencairn* altered his Entail with respect to these Lands; and that it is incumbent on the Claimant to instruct the same, by a Progress from the late Earl downwards: For if Mr *John Cunningham* derives his Title from the present Earl, then the Entail was a Bar to it; if from the late Earl, it was to be presumed that he would settle the same, failing Mr *John* and his Heirs, to return to the Earl's Heirs of Entail, which therefore the Claimant ought now to instruct to the Meeting.

The Insufficiency of this Reply, as well as of the Objection itself, will be obvious to your Lordships at first View: That a Meeting of Freeholders should be intitled to investigate, and to call for Production of the whole Progress of any Claimant's Title to his Estate, in order to discover if there are any Flaws or Imperfections therein. That judicative Capacity with which they are vested, is extremely limited, and to a particular Purpose and Effect. If the Titles produced are *ex facie* good, and the Estate itself of the Extent or Valuation required by Law, no more is requisite to found the Claim for being admitted upon the Roll of Freeholders. It is *jus tertii* to them to found upon the Rights of third Parties, who do not themselves either claim or object; and to call for Production of a Progress of the Title-deeds of such Estate, to be scrutinized or examined by them; and therefore, as the Titles produced for Mr *Cunninghame*, viz. his Charter under the Great Seal and Infeftment, with the Retour prior to the 1681, certifying the old Extent of these Lands, to be no less than *L. 5 Scots*, give such a Qualification as the Law says shall be a Title for Inrollment, it was the Duty of the Freeholders to have sustained the same. But upon the Vote being stated, it carried also not to inroll.

Upon this state of the Case, as the Petitioners will be pardoned to say, that these Judgments of the Freeholders upon the three Claims above recited, are manifestly partial and unjust, they cannot entertain the least Doubt of being redressed by

by your Lordships; and are in your Lordships Judgment, whether, upon the Principles of the Common Law, they are not intitled to be indemnified of the Expences of obtaining this Redress, from Mr Muir of Caldwell, upon whose Objections the Freeholders have been pleased to commit such manifest Injustice,

May it therefore please your Lordships, in terms of the above-mentioned Statute of the 16th of the King, to grant Warrant for serving this Complaint upon Willram Muir of Caldwell, Esq; and to order him to put in his Answers thereto, thirty Days after Service; and upon the Merits of the Complaint itself to find, that your Petitioners ought to have been admitted upon the Roll of Freeholders of the County of Renfrew; and to give the necessary Directions for your Petitioners being forthwith entered upon said Roll; and to give your Petitioners such other Relief in the Premisses, as to your Lordships shall seem just.

According to Justice, &c.

*Wishet good votes
West. Clerk.*

ALEX. LOCKHART.

2. 1700

Lord Almore complains of the election laws. portion
of votes on superiority & on ~~inferior~~ ^{superiorities}.
But as the Law stands superiority is good. ~~therefore~~
to show field good

The objection ~~on~~ the entail not competent to the free
holders. the Claimant takes his right subject to
the rights of the heirs of entail.

The Case of Lord Sutherlands voters some years
ago this objection overruled

2
3 nothing in that objection that one vote is
for the whole

James after the 1681 and before 12 Anna trust votes
frequent but cut down by the oath in that act.

7. 62 Distinguishes nominal & fictitious from
a real vote

This Court have a power to examine this question
whether a vote is nominal & fictitious or not: and may
inquire into extrinsic evidence.

No doubt that these votes are nominal & fictitious:
in the case of Frisic of a different opinion, but
has now altered it.

Palston The Right of voting ought always to be in the sole
rights in the Country: this the view of all our acts
of Parliament. but ^{perhaps} the words do not fix it with
precision enough.

1. the act 1681. a superiority & the heir of a superior
made a good vote.

2. Competent to enquire otherwise than by the oath of
how ever small the interest be it must be a good vote

it is just to
the freeholders to object
to the rights of the heirs
of entail.